REMARKS

Claims 1-29 and 32 are pending in the present application. Claims 1, 6, and 17 have been amended.

Applicant thanks the Examiner for allowing Claims 14, 18, 22-25, 28 and 29 and indicating the independent claims would be novel if amended with Claims 8 and 10.

Independent Claim 17 has been amended with limitations from Claims 8 and 10. Applicant respectfully request allowance of Claim 17.

The 6/7/2005 Office Action rejected Claims 1-4, 5-13, 15-17, 19-21 and 26-27 and 32, under 35 U.S.C. § 103(a) as being unpatentable over Magnusson et al. (WO99-49690) and in further view of O'Carroll (U.S. Patent No. 6,714,794) (hereafter, Magnusson and O'Carroll).

The Office Action acknowledged that Magnusson is silent on a "signal strength indicator," "CDMA communications," "determining whether a signal strength of a HDR carrier signal broadcast by a BTS exceeds a predetermined level," and "automatically exchange data using CDMA when the strength indicator detects said wireless mobile unit is in said HDR CDMA area and the processor determines a need for exchanging data between the mobile and BTS." The Office Action relied on O'Carroll to teach these limitations.

Applicant respectfully submits that the combination of Magnusson and O'Carroll does not teach Applicant's Claim 1. First, O'Carroll does not teach Claim 1 because O'Carroll relates to a "communication system (10) that provides content to communication devices (12)" (Abstract and col. 3, lines 9-10). Fig. 7 of O'Carroll shows functions at the "BSS 22" (see col. 8, lines 30-54) to communicate data to a communication device 12. There is no suggestion in O'Carroll that the functions in Fig. 7 can or should be performed at a communication device 12. In contrast, Claim 1 recites components and functions in a "mobile unit."

Second, like Magnusson, O'Carroll does not teach a "mobile unit comprising: a signal strength indicator," as recited in Claim 1. The Office Action cited col. 3, lines 23-27 of O'Carroll, but these lines only disclose "a received signal strength from the communication device at a communication system base station." Col. 8, lines 37-39 also state "a transmitted signal the received strength of which at the BSS 22." Thus, O'Carroll mentions a "signal strength" at a "base station," while Claim 1 recites determining a "signal strength" at a "mobile

unit." O'Carroll does not suggest determining a "signal strength" at a "mobile unit," as recited in Claim 1.

Thus, O'Carroll does not disclose a "mobile unit comprising a signal strength indicator determining "whether a strength of a high data rate carrier signal broadcast by a base station" received at the mobile unit "exceeds a predetermined level," as recited in Claim 1.

Third, like Magnusson, O'Carroll does not teach a "mobile unit comprising: a signal strength indicator configured to detect when the wireless mobile unit is in a high data rate, code division multiple access (CDMA) area," as recited in Claim 1. O'Carroll mentions CDMA (col. 4, lines 43-44), but O'Carroll does not teach "a signal strength indicator configured to detect when the wireless mobile unit is in a high data rate, code division multiple access (CDMA) area," as recited in Claim 1.

Fourth, neither Magnusson nor O'Carroll disclose "a data burst optimizer configured to automatically exchange said data between said wireless mobile unit and said base station at a high data rate using code division multiple access," as recited in Claim 1. O'Carroll mentions CDMA (col. 4, lines 43-44), but O'Carroll does not teach exchanging data between a wireless mobile unit and a base station "at a high data rate using code division multiple access," as recited in Claim 1.

In addition, there is no motivation to combine Magnusson and O'Carroll because Magnusson and O'Carroll relate to different technical problems. Magnusson relates to a problem of a "mobile terminal" trying to decide which "carrier service" from a number of "carrier services" to use (Abstract; Background; Summary). O'Carroll relates to a problem of determining an "optimum data rate" and an "optimum content format" for providing content to "communication devices 12" (Abstract; Fig. 7).

Claims 2-5 depend from Claim 1 and should be allowable for the reasons stated above.

For Claims 2-3, Magnusson does not teach a "high data rate CDMA area," as recited in Claims 2-3.

The Office Action rejected Claim 2 by stating Magnusson teaches "selecting the optimal carrier service" (emphasis added). There is no "selecting" in Claim 2. Claim 2 recites "said processor invokes said data burst optimizer to automatically exchange said data ... when said wireless mobile unit is in said high data rate CDMA area." Since Magnusson teaches "selecting

the optimal carrier service," Magnusson teaches away from the "automatically exchange" limitation of Claim 2.

The Office Action rejected Claim 3 by citing p. 5, lines 16-35 of Magnusson. But these lines do not disclose a "data burst optimizer ... configured to continuously detect when said wireless mobile unit is in said high data rate CDMA area," as recited in Claim 3. The Office Action does not cite any other published reference, and thus uses impermissible hindsight to reject Claim 3.

For Claims 4, 10, 13, 15, 19 and 27, the Office Action does not cite any specific published reference to show a motivation to combine the elements of these Claims with the elements of their base Claims. For example, the Office Action does not cite any specific published reference to show a motivation to combine the elements of Claim 4 with the elements of Claim 1. Thus, the rejection of Claims 4, 10, 13, 15, 19 and 27, without citing specific published references, is based on impermissible hindsight after reading the Claims themselves.

For Claim 5, the Office Action cited page 5, lines 16-35 of Magnusson in rejecting Claim 5, but nothing in these lines teaches a "data burst optimizer ... configured to stop exchanging said data between said wireless mobile unit and said base station when said wireless mobile unit is not in said high data rate area." The Office Action makes an assumption that "said DBO is configured to stop exchanging said data ...," but this text is not in Magnusson. There is no "DBO" mentioned on p. 5 of Magnusson or shown in the figures, so the rejection of Claim 5 in unclear.

Claims 6-13, 15-17, 19-21, 26, 27 and 32 should be allowable for at least the reasons stated above.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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